fidh

VIASNA human rights center

ARBITRARY PREVENTIVE DETENTION OF ACTIVISTS IN BELARUS

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel,



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Cover photo : TsIP, Okrestina street, Minsk
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List of Abbreviations

KoAP – Code of Administrative Violations of the Republic of Belarus
PIKoAP – Code of Procedural Execution of the Republic of Belarus on Administrative Violations
TsIP – Detention Center for Violators
IVS – Temporary Detention Facility
GOM – Municipal Police Precinct
RUVD – District Internal Affairs Department
WGAD – UN Working Group on Arbitrary Detention

Introduction

FIDH and the Human Rights Center Viasna, its member organisation in Belarus, conducted an international investigation mission in Belarus in June 2014.

The mission focused on numerous cases of groundless and illegal (i.e. not connected to any violation of the law) detention and subsequent arrest of citizens solely on the basis of their membership in opposition groups or other groups and movements critical of the Belarusian government.

Mission participants decided to concentrate on just one type of arbitrary detention—so-called *preventive* arrests. Even though there are no legal definitions for this type of arbitrary detention, the practice of its application makes it possible to define it as ***the arbitrary detention of citizens (without legal grounds) in the period immediately preceding important political or social events*** (election campaigns, official visits by leaders of foreign states, planned large-scale events held by the opposition, official large-scale events organized by the authorities, etc.). The purpose of these kinds of detentions is to isolate the activists to prevent their explicit or assumed participation in public street actions, contacts with international delegations or the press, or other types of political and civil activities.

During the FIDH and HRC Viasna international investigation mission, representatives from human rights organisations in the Russian Federation, Kyrgyzstan, and Belarus, interviewed those who were the victims of arbitrary detention over the past two to three years. Special attention was paid to those detained prior to the World Ice Hockey Championship, which was held from May 9 to 26, 2014 in Minsk. Those interviewed included representatives of various social and political groups like *Malady front* [Young Front], anarchy groups, web-activists and members of football fan clubs. The thing these people had in common was that they had previously come to the notice of law enforcement bodies for their participation in opposition actions. And this was exactly the reason for their arbitrary detentions prior to the World Ice Hockey Championship.

This report includes a detailed analysis of the legal procedures used to conduct arbitrary detentions, the international obligations undertaken by Belarus that prohibit arbitrary detentions, and the testimony of people subjected to such detentions that was gathered during the mission.

Detention conditions under administrative arrest are cause for serious concern but did not fall within the purview of this report since our organisations have dedicated numerous publications to this topic.[1] Names of some of the witnesses have been withheld in order to ensure their safety, but they are in the possession of HRC Viasna and FIDH, which were able to check the information provided by all those interviewed.

1. HRC Viasna: Report on the Results of Monitoring Prison Conditions in Belarus, 2013, http://spring96.org/files/book/en/2013_prison_conditions_en.pdf;FIDH – HRC Viasna: Conditions of Detention in the Republic of Belarus, 2008, http://www.fidh.org/IMG/pdf/Belarus500ang2008.pdf;
FIDH: Belarus. Restrictions on the Political and Civil Rights of Citizens Following the 2012 Presidential Election, 2011, http://www.fidh.org/IMG/pdf/rapport_Belarus_En_web.pdf

I. The Issue of Arbitrary Detention in Belarus

The Belarusian government first used this type of arbitrary detention on a large scale in the run-up to the 2006 presidential election. Several days before the election, the government conducted an operation to detain opposition figures with the help of the KGB and the police. Almost all activists from the regional headquarters of presidential candidates Aliaksandr Milinkevic and Aliaksandr Kazulin were arrested for varying periods. People were detained on the street and in private apartments and homes following pre-determined lists. The activists detained during this period were accused of disorderly conduct (Article 156 of the Code of Administrative Violations of the Republic of Belarus (*KoAP*) that was in effect at the time, which is now Article 17.1 of the new version of the *KoAP*), in most cases for using obscene language in a public place. On the basis of court rulings, they were subjected to administrative penalties in the form of arrest for periods of up to 15 days.

Some opposition activists served two or three administrative arrests in a row without leaving prison. For example, Aleh Metelitsa, a young activist from Byalynichi was detained on 16 February 2006 and then sentenced to 15 days of arrest under Article 156 of the *KoAP* (petty hooliganism) pursuant to a decision issued by the Lenin District Court of Minsk. After he served his sentence, he was prosecuted for administrative violations two more times without actually ever being released from prison. He spent a total of 30 days in a temporary detention facility (*IVS*).

According to the HRC Viasna, 236 opposition activists were arrested over the course of the entire election campaign and right up to the election on 19 March 2006. The goal of the authorities in holding this large-scale operation was to prevent peaceful protest actions from being held in Minsk after the elections.

In subsequent years the government used this tactic numerous times in the run-up to significant political or social events like planned public actions held by the opposition, elections, and official visits to Belarus by high-ranking foreign guests whose visits might, in the opinion of the country's special services, cause a public protest action to be held. This trend became systematic in nature.

For example, several activists from the *Malady front* organisation were subjected to arbitrary preventive detention prior to President Vladimir Putin's official visit to Minsk on 31 May 2012. Almost the exact same activists were again subjected to administrative detention and subsequent arrest in the run-up to official celebrations marking Independence Day (Republic Day) on 3 July 2012. Another wave of mass arbitrary detentions swept through the country prior to an official visit from Prime Minister Dmitry Medvedev on 18 July 2012.

These events served as grounds for representatives of human rights organisations in Belarus to file a joint letter addressed to the Prosecutor General of the Republic of Belarus and the chairman of the Supreme Court of the Republic of Belarus. This letter, which was signed by representatives of the Belarusian Helsinki Committee, the Human Rights Center Viasna, the Salidarnasts Committee for the Protection of the Repressed, the Center for Legal Transformation, and the Center for Human Rights, noted that this practice of detention, which is a gross violation of the rights of Belarusian citizens guaranteed by the Belarusian Constitution and the country's international obligations in the sphere of human rights, had become system-wide in nature and should be classified as arbitrary detention. These human rights organisations further stated that these actions are contrary to the principals of a state based on the rule of law and force police officers and officers of the court to participate in the political persecution of citizens. The human rights defenders requested a meeting with the Prosecutor General and the chairman of the Supreme Court to discuss the current situation. A list of activists arrested prior to the abovementioned events was attached to the letter.

This letter was ignored by high-ranking representatives of government bodies. M.V. Popov, head of the Department for Monitoring the Observance of Citizen Rights and Freedoms, limited himself to a typical bureaucratic noncommittal answer by informing “A. Hulak et. al.”[2] that “*since you are not an individual who has been delegated the right, following the procedures established by law, to represent the interests of the citizens listed in your letter, there are essentially no grounds for reviewing your statement*.”[3]



TsIP, Okrestina street, Minsk
Credit: Uladz Hrydzin

In his response, M.V. Popov also cited Article 12.1 of the Code of Procedural Execution of the Republic of Belarus on Administration Violations, pursuant to which individuals in relation to whom administrative proceedings are being conducted, a defense attorney, a victim, a legal representative, a representative, a witness, an expert, a specialist, an interpreter, observers, and other individuals taking part in administrative proceedings have the right to appeal procedural actions or rulings adopted in administrative cases.

It was in regards to this that Valiantsin Stefanovic, deputy chairman of the HRC Viasna, stated in comments published on Viasna’s website on 7 August 2012[4] that in this letter “*representatives of Belarusian human rights organisations expressed their concern that in Belarus illegal, arbitrary, politically-motivated detentions and arrests of political and social activists have basically become the norm. It is regrettable that both representatives of the Ministry of Internal Affairs and judges have become involved in these proceedings. This is the issue we planned on discussing with high-ranking officials whose responsibilities include protecting the legal rights of the country’s citizens. We did not file complaints about rulings issued by the courts, and we did not intend to represent these citizens at government bodies or institutions. It’s a shame that the Prosecutor General has buried his head in the sand like an ostrich to avoid proposals made by human rights defenders*.”

The government continued to make active use of the tactic of arbitrary preventive detention in 2013 – 2014.

The World Ice Hockey Championship, which took place from May 9 – 26, 2014 in Minsk and was an important event for the country which many international sports teams and media outlets were due to attend, was no exception. Available figures show that at least 37 political and social activists were subjected to arbitrary arrest in the run-up to the championship. Local authorities in Minsk also “cleansed” the city of so-called asocial elements, i.e. persons of no fixed abode, prostitutes, and individuals suffering from alcoholism. The total number of citizens isolated in some way prior to and during the championship is not known. According to the Ministry of Internal Affairs, upwards of 350 prostitutes were subjected to administrative arrest in this period of time.[5] According to activists released after being held at the Minsk *IVS*, this facility was overflowing with detainees and the police had to take some of them to the Zhodino temporary detention facility or to medical labor centers (closed institutions where people with alcohol or other dependencies are forcibly confined and required to perform labor).[6]

2. Aleh Hulak heads the Belarusian Helsinki Committee, which was one of the few organisations to retain its official registration following the mass liquidation of NGOs in 2003 – 2004.

3. http://spring96.org/be/news/55475

4. http://spring96.org/ru/news/55477

5. http://spring96.org/ru/news/71402

6. http://spring96.org/ru/news/71134

In reaction to these mass arrests, Belarusian human rights activists and the international human rights community publicly called for an end to the arbitrary treatment of activists. On 16 May 2014, the EU's European External Action Service denounced that arbitrary detention of activists in Belarus in a special statement. "*We are concerned by the persecution, arbitrary arrest, and deprivation of freedom that several dozen representatives of civil society and opposition organisations have been subjected to prior to the World Ice Hockey Championship in Belarus. We condemn the use of administrative arrest by the Belarusian authorities as a tool aimed at creating pressure, fear, and uncertainty in the younger generation in Belarus. We call upon the Belarusian government to immediately cease these actions, free all individuals unjustly detained, and withdraw any accusations against them. We would also like to repeat our call for the immediate and unconditional release and rehabilitation of all political prisoners. As previously, the EU's readiness to further develop its relationship with Belarus depends on this country taking concrete steps towards democracy, human rights, and the rule of law*."[7]

The Belarusian government took the position of denying that the prosecution of activists was politically motivated or arbitrary. On 14 May 2014, the Belarusian Minister of Internal Affairs Igor Shunevich stated in response to questions from journalists taken at the country's Parliament that all the people detained prior to the opening of the World Ice Hockey Championship in Minsk had committed administrative violations. "*There is not and can never be any definition of 'preventive detention.' The individuals detained were individuals who committed administrative violations like hooliganism, failure to obey police officers, etc. Detentions such as these have occurred, are occurring, and will continue to occur"*[8]

The Human Rights Center Viasna sent the UN Working Group on Arbitrary Detention (WGAD) an informational letter regarding 32 cases of these kinds of detentions, and also compiled 35 individual appeals and sent them to the WGAD.[9]

According to information received from those interviewed by the FIDH and HRC Viasna mission, representatives of the Ministry of Internal Affairs acted according to a previously-compiled list of "potentially dangerous activists" subject to detention during the championship. Apparently, their potential "danger" consisted of the fact that the Belarusian special services viewed them as individuals inclined to organize or participate actively in mass opposition events.

The work of representatives of the Ministry of Internal Affairs followed the same pattern in this case. Some people were summoned to the District Internal Affairs Department (RUVD) or municipal police precincts (GOM) under various pretenses for "preventive talks," during which reports on administrative violations under articles 17.1 (disorderly conduct) and 23.4 (failure to obey the demands of police officers) of the KoAP were drawn up in relation to these people. Then they were detained, transported to court, and then taken on to a detention facility. In a number of other cases, activists were simply detained on the street, near the entrances to their buildings, or even at home, right in front of their families. The reason given for detention was that the activists needed to be taken to a police station to "establish their identities." When they reached the station, they were charged with using "obscene language" in a public place and "failing to obey police officers."

The courts "reviewed" the materials of the administrative proceedings and issued rulings on administrative arrests for periods of up to 25 days. Even though in theory possible sanctions for violation of these articles include fines, in the vast majority of cases judges issued a sentence of administrative arrest. Another unique aspect of these cases was that only testimony given by police officers served as the basis for the court rulings. Requests made by the "violator's" defense attorney to question other witnesses were generally declined or viewed with suspicion, since the testimony of these witnesses would refute the testimony given by police officers.

7. http://spring96.org/ru/news/71134

8. http://news.tut.by/society/398879.html

9. https://spring96.org/ru/news/70838

II. International obligations and standards

Belarus is bound to respect its international human rights obligations, as well as its commitments and pledges, notably those elaborated by or formulated within the framework of the United Nations (UN) and the Organisation for Security and Co-operation in Europe (OSCE). The right to personal liberty and freedom from arbitrary arrest and detention are enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR) to which Belarus is a party.

The ICCPR is the key instrument in the protection of civil and political rights, being legally binding upon those states that have ratified it. The Covenant also provides for an optional complaints procedure whereby individuals can submit a communication on any alleged violation of the Covenant by a state party that has accepted the procedure. Belarus is one such state. Implementation of the ICCPR is monitored by the UN Human Rights Committee (henceforth "the Committee"). It can be also be evoked in the course of the Universal Periodic Review (UPR), a mechanism of the UN Human Rights Council wherein the human rights record of all UN member states is periodically reviewed through a dialogue and recommendation process. Another important mechanism is the UN Working Group on Arbitrary Detention (WGAD). This is a special procedure of the Human Rights Council whose mandate covers all UN member states irrespective of their acceptance of individual instruments. Both the Committee and the WGAD work on Belarus: since its ratification of the ICCPR in 1973, Belarus has been reviewed four times, most recently in 1997. Belarus' fifth State report under this convention has been overdue since 2001, which has prevented the scheduling of the country's next formal review. The WGAD visited Belarus once, in 2004, and published a report on the mission. Most recently, in 2010, Belarus was subject to review under the UPR. It will be reviewed again in 2015.

Arbitrary detention violates *inter alia* articles 7 and 9 of the Universal Declaration of Human Rights. Article 9 explicitly states that "No one shall be subjected to arbitrary arrest, detention or exile". This right applies to every person without distinction of any kind (Art.2). Article 7 guarantees the right to equal protection of the law for every individual. In cases of arbitrary detention this right is compromised as detained persons can, for instance, be subjected to vague charges based solely on the testimony of police officers and subsequently have no access to a lawyer.

Provisions of the Universal Declaration are reflected in the ICCPR. Article 9 states that "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law". Moreover, the Covenant stipulates that individuals who have suffered arbitrary detention have a right to compensation. Article 14 ICCPR provides for the right to a fair trial: "All persons shall be equal before the courts and tribunals".

The Human Rights Committee has built upon the text of the ICCPR to clarify the notions of "arrest", "detention" and "arbitrariness". Most importantly, they have established that "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability.[10] As the present report shows, in Belarus preventive detentions are characterised by these three elements. However, the Committee has not yet reviewed this issue in Belarus: in its most recent (1997) Concluding Observations on Belarus, the Committee did not mention arbitrary detention.[11]

10. *Hugo van Alphen v. The Netherlands, Communication No. 305/1988,* U.N. Doc. CCPR/C/39/D/305/1988 (1990).

11. Concluding observations of the Human Rights Committee, Belarus, 19 November 1997. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f79%2fAdd.86&Lang=en

The UPR provides a platform for UN member states to review human rights promotion and protection in other states and make recommendations in this regard. The state under review can accept, reject, or "note" (leave pending) these recommendations. Belarus underwent the UPR in 2010, an occasion on which the issue of arbitrary detention was raised. Notably, Spain recommended that Belarus "intensify its efforts to investigate, identify and, if applicable, punish alleged perpetrators of the harassment, arbitrary detention and torture of opponents of the Government, including journalists and human rights defenders". Belarus responded that "this recommendation is not acceptable, since there is no factual basis for the allegations that persons are detained and brought to trial on political grounds in Belarus". Additionally, the Czech Republic recommended that Belarus should "adopt measures to prevent attacks, harassment, [and] arbitrary detention of political activists and journalists", to which Belarus replied that this recommendation had already been implemented: "Such measures are already established in various laws and regulations of Belarus. Violations carry criminal, administrative or disciplinary liability".[12] These replies from the Belarusian authorities show their unwillingness to act upon UPR recommendations to eradicate – or indeed even to recognize the prevalence of – arbitrary detention.

The issue of arbitrary detention in Belarus has been taken up by the Working Group on Arbitrary Detention (WGAD). The mandate of the Working Group allows it to investigate individual cases of deprivation of liberty. In order to do so, the WGAD can seek and receive information from governments, NGOs and other stakeholders. The WGAD can act on this information by sending concerned states urgent appeals and communications, requesting additional information where the answers received are not satisfactory, and sending follow-up communications. It can conduct field visits in order to understand the general situation, and publishes annual reports that present activities, findings, conclusions and recommendations to governments.

The WGAD visited Belarus in 2004 and published a report on the mission. The report recalled the provisions of the Belarusian Code of Administrative Offences, which has paved the way for numerous arbitrary administrative detentions.

In its report the WGAD stated that the Code of Administrative Offences was misused in order to repress demonstrators and political opponents, as well as to obtain information from witnesses. It is used against persons exercising their rights to peaceful assembly, demonstration, as well as to freedom of expression, opinion and dissemination of information.[13]

Moreover, the report noted that even if detention for administrative offences is decided by courts, the proceedings violate standards of the right to a fair trial as set out by the ICCPR. Administrative detention is applied to individuals without grounds, i.e. in an arbitrary manner. Therefore, the Working Group invited the authorities of Belarus to "reconsider the legal framework regarding administrative detention" to "ensure that this form of deprivation is not being misused". However, there has been no such reconsideration on the part of Belarus, which would have brought improvement. On the contrary, since 2004 the misuse of the Code of Administrative Offences for arbitrary detentions has only intensified, most notably after the 2010 presidential elections.

Apart from monitoring the situation of arbitrary detention through country visits, the WGAD can also take on individual cases. So far it has established four cases of arbitrary detention in Belarus: Ales Bialiatski and Andrei Sannikau in 2012, Mikalai Statkevich in 2011 and Mikhail Marynich in 2005. However, these are not cases of preventive administrative detention but rather individuals facing criminal charges. Given the number of short administrative detentions in Belarus the WGAD does not have the capacity to investigate each and every individual case.

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12. Point 98.23 and 98.33 of the Report of the Working Group on the Universal Periodic Review, Belarus, 21 June 2010, available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/145/21/PDF/G1014521.pdf?OpenElement; Report of the Working Group on the Universal Periodic Review, Belarus, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, 15 September 2010. Available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/BY/A.HRC.15.16.Add.1_BELARUS_eng.pdf

13. UN Commission on Human Rights, Report of the Working Group on Arbitrary Detention, Mission to Belarus, 25 November 2004, Available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/166/25/PDF/G0416625.pdf?OpenElement

The OSCE has adopted a number of instruments, including principles and commitments, to guarantee freedom from arbitrary arrest and detention and the right to a fair trial. Whilst OSCE commitments may not be legally binding, as an OSCE participating State Belarus is considered to have signed up to these and should respect them. OSCE commitments on freedom from arbitrary arrest are included notably in the Vienna 1989 Document, Copenhagen 1990 Document and the Moscow 1991 Document. These Documents state that participating States "will ensure that no one will be subjected to arbitrary arrest, detention or exile" or that "no one will be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law". They further specify that "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity".

Non-respect of OSCE commitments by Belarus can be sanctioned by other international bodies such as the EU. For example, in 2006 the European Council "deplored the failure of the Belarus authorities to meet OSCE commitments to democratic elections, considered that the Presidential elections of 19 March 2006 were fundamentally flawed", and introduced sanctions against President Lukashenka and other officials.[14]

Even if EU sanctions do not explicitly relate to arbitrary detention, the EU has otherwise criticised the practice in Belarus. Notably, the External Action Service expressed "concern about the harassment, arbitrary arrest and detention of several dozens of representatives of civil society and opposition organisations in the run up to the World Ice Hockey Championship in Belarus", urging the government to stop these actions. [15] On 18 June 2014 the EU raised the issue during meetings of the Human Rights Council as it considered extending the mandate of the Special Rapporteur on Belarus. The EU supported the extension, arguing that "[a]rbitrary detention as well as constraining fundamental civil liberties of political opponents, including former presidential candidates, journalists, human rights defenders and activists continues".[16]

14. EU COUNCIL REGULATION (EC) No 765/2006 of 18 May 2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:134:0001:0011:EN:PDF

15. Statement by the Spokesperson on the arbitrary detentions of more than 30 civil society and political activists in Belarus, Brussels 16 May 2014, available at: http://www.eeas.europa.eu/statements/docs/2014/140516_03_en.pdf

16. UN HRC 26th Session, Interactive Dialogue with SR on Belarus, 18 June 2104. Available at http://eeas.europa.eu/delegations/un_geneva/documents/eu_statments/human_right/20140618_id_belarus.pdf

III. Administrative Detention in Belarus: Theory and Practice

Pursuant to Republic of Belarus Law No. 263-Z "On Internal Affairs Bodies of the Republic of Belarus" dated 17 July 2007, the activities of internal affairs bodies shall be founded on "the principles of legality, respect, observance of the rights, freedoms, and legal interests of citizens, and humanism." Officers of internal affairs bodies may only place restrictions on the rights and freedoms of citizens in cases stipulated by laws or other legal acts of the Republic of Belarus. Any time an officer places restrictions of the rights and freedoms of a citizen, the officer must explain the grounds for such a restriction, as well as the citizen's rights and responsibilities that arise in this connection.

Internal affairs bodies only have the right to bring in certain strictly defined categories of individuals who have not committed socially dangerous acts. These categories include persons of no fixed abode (to determine their identities, check their names against police records, or provide them with social or medical assistance) and persons displaying signs of a mental disorder or illness, whose actions create a clear threat to themselves or the people around them (to take them to a healthcare facility or their homes).

Under the law, internal affairs bodies have the right to detain and place in detention facilities or other places of confinement maintained by internal affairs bodies only individuals in relation to whom administrative proceedings are in process; individuals subject to administrative arrest; and other categories of individuals directly stipulated by law, including suspects or defendants in criminal cases, individuals subject to forced deportation or removal from the Republic of Belarus, individuals being sent to medical labor centers, and minors, as part of measures taken to prevent neglect or juvenile delinquency.

Where there are causes and grounds (these concepts are separate in Belarusian law) to start administrative proceedings, these proceedings are deemed to have started from the time a report on an administrative violation or a procedural action is compiled, from the time a ruling is issued on measures to establish administrative proceedings, or from the time of an individual's administrative detention.[17]

A detailed list of causes and grounds for starting an administrative proceeding is set forth in Article 9.1. of the Code of Procedural Execution of the Republic of Belarus on Administrative Violations (PIKoAP). Causes for starting an administrative proceeding are: a statement from an individual; a communication from an official at a government body, an NGO, or any other type of organisation; and direct discovery of the signs of an administrative violation by a court or body leading the administrative proceeding. Grounds for starting an administrative proceeding are: sufficient information indicating signs of an administrative violation as stipulated in the articles of the Special Part of the Code of Administrative Violations, if no circumstances exist that would exclude an administrative proceeding. (Article 9.5. of the PIKoAP).

The administrative detention of an individual involves the placement of short-term restrictions on the freedom of the individual in relation to whom the administrative proceeding is being conducted, for an administrative violation committed by this individual, the delivery of this individual to a

17. In addition to the above, from the time a ruling is issued on the imposition of an administrative penalty in cases where, pursuant to parts 2 – 3^1 of Article 10.3 of the KoAP, a report on an administrative violation is not compiled (when guilt is admitted, or under other circumstances).

place determined by the body leading the administrative proceeding, and the confinement of this individual at this place (Article 8.2. of the PIKoAP).

This means that no *suspicion* of the commission of an administrative violation or preventive or other considerations may serve as grounds for starting an administrative proceeding or detaining an individual, even for a short period. Specifically, pursuant to Article 8.4. of the PIKoAP, only an individual in relation to whom administrative proceedings are being conducted may be detained for a period of up to three hours. Any other actions taken by representatives of internal affairs bodies must be carried out without detaining the individual. Specifically, representatives of internal affairs bodies have the right to check an individual's identification at guarded facilities or when they suspect that this individual has committed a crime or administrative violation and to summon an individual in relation to proceedings, criminal cases, or cases of administrative violation that are in process.

However, the sheer number of cases of arbitrary detention show that Belarus has an entrenched practice of using administrative detention as one of the forms of pressuring political opponents of the regime. FIDH and HRC Viasna have repeatedly drawn the attention of the Belarusian government and the international community to the unacceptability of this practice, which is especially noticeable prior to or during important social and political events in the country. As a result, the term "*preventive detention*" has become firmly entrenched in the daily language of socially- and politically-active citizens.

In June 2014, the FIDH and HRC Viasna international investigation mission was able to interview 16 activists who had been subjected to administrative detention. Special attention was devoted to the mass detentions that took place before the World Ice Hockey Championship in May 2014 in order to obtain the most current testimony. However, most of those interviewed had already had a great deal of experience with administrative detention prior to the championship, mainly in the form of "preventive" detention. Some of the detentions covered both the period during which the championship was held and the dates of Chernobyl Way, when by tradition authorized demonstrations and meetings are held in Minsk on the anniversary of the disaster at the Chernobyl Nuclear Power Plant. In 2014, eight activists were subjected to preventive detention before Chernobyl Way, and the well-known activists and former political prisoners Zmitser Dashkevich and Alexander Frantskevich were sentenced to 25 days of administrative arrest, which covered both Chernobyl Way and the World Ice Hockey Championship.

No attempt is made to conceal the preventive nature of these types of detentions. For example, *Malady front* activist Mikola Demidenko told journalists that he was held for one extra night at the RUVD after finishing his term at the Detention Center for Violators (TsIP) because "the championship has not ended yet."

Demidenko reported that "*Yesterday, just three hours before I was due to be released from Okrestina Detention Center, officers from the Frunzensky RUVD in Minsk picked me up and took me there. It was explained to me that I should understand that the championship was not over yet. The officers drew up a report under Article 17.1 of the KoAP, but they promised to release me in the morning. I didn't believe them, but that's exactly what happened.*" He also noted that he was held in a "glass" (a tiny cell where people detained at the RUVD are kept) all night. "*The conditions there were terrible: there was a narrow bench that was impossible to lie on, so I had to sleep on the tiled floor.*"[18]

Usually a court will sentence an individual whose actions it believes must be restricted during times when high-ranking guests are in the country or possible protest actions may be held to anywhere from several days to just under one month of administrative arrest, which is why this type of detention is commonly known as "serving days." Article 17.1 of the Code of Administrative Offenses is frequently used for this purpose ("disorderly conduct," in the form of obscene language, relieving oneself or using obscene language in a public place, and other deliberate acts that "violate public order").

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18. http://spring96.org/ru/news/71254

Mass preventive arrests connected with the World Ice Hockey Championship began in early May, since the championship began on May 9th. Human rights defenders learned of 37 activists who were arrested in this manner, but this number was significantly greater according to other accounts.

Alexander Frantskevich, an activist in an anti-fascist movement and an anarchist, was recognized as a political prisoner after he was convicted in the so-called "anarchist case" in May 2011. Frantskevich and four other activists in the anarchist movement were found guilty of malicious hooliganism and the intentional destruction of property. Frantskevich was also found guilty of gaining unauthorized access to information, committing computer sabotage, and developing, using or distributing malware. A court sentenced him to three years confinement in a medium-security facility. Frantskevich was released in September 2013 at the end of his sentence.

In April 2014, Frantskevich was detained on the eve of Chernobyl Way and sentenced to 25 days, i.e. basically until the end of the World Ice Hockey Championship. He told members of the FIDH and HRC Viasna mission that

> "*I left work and was walking towards the metro. Four people in plainclothes approached me and asked if I had any documents on me. I was told that I was being detained until my identity could be established. When they took me, they called someone and tried to clarify if they had taken the right person or not. At first they were saying that they couldn't find me. They twisted my arms behind my back and put me in an official car. They took me to the RUVD, where all my phones were taken. Then they led me out and took me to the GOM. They didn't let me make any phone calls. They wrote up an inventory of my things and then went off to write a report. They brought out a report one hour later which stated that I had resisted the police and used obscene language. I refused to sign it. Then they took me to a TsIP. I stayed there until court. My relatives guessed that I had been detained when I never came home from work. The deputy chief of the RUVD told me 'You must understand that we can't let you ruin the holiday,' by which he meant the championship. He was the same one who was running the courts in Chernobyl Way cases and delivered everyone around to the judges, so I wouldn't be surprised if he also decided on the punishment. I was given 25 days under articles 17.1 and 23.4. My lawyer filed an appeal*."

The Minsk Municipal Court later denied Frantskevich's complaint and upheld the ruling issued by the first instance court. As is typical in cases involving the detention of well-known social activists and political prisoners, Frantskevich's release was handled in such a way that he would avoid meeting colleagues as he left prison. Almost two dozen people had gathered outside the prison after 6 p.m., which was the time he was due to be released. However, around 4 p.m. police officers drove him 30 – 40 km outside of Minsk in the direction of Dzerzhinsk. He waited in the car for some time and was then driven back in the Sovetsky District RUVD in Minsk, from which he was released.[19]

Zmitser Dashkevich is the leader of the *Malady front* organisation. In a 2006 criminal case he was convicted and sentenced to one year and six months in prison under Article 193.1 of the RB Criminal Code (activity on behalf of an unregistered organisation). He was released in 2008 and taken into preventive detention on 18 December 2010 before the start of an opposition action planned for the end of the presidential election on December 19. He was then sentenced to two years in prison under Article 139(2) of the Criminal Code (malicious hooliganism). While still in the penal colony, he was sentenced to another year in prison under Article 411 of the Criminal Code (systematic failure to obey the legal demands of the administration at a correctional facility). He was released on 28 August 2013 at the end of his term and recognized by Belarusian and international human rights defenders as a prisoner of conscience. Under a court ruling, Dashkevich has been under preventive surveillance since his release. He also has been detained repeatedly on contrived grounds for failure to obey the demands of police officers, disorderly conduct, and failure to observe the terms of his preventive surveillance. He was last detained before the 2014 World Ice Hockey Championship and placed under administrative arrest for a period of 25 days.

19. http://naviny.by/rubrics/politic/2014/05/20/ic_news_112_436426/

Dashkevich informed the FIDH and HRC Viasna mission that

> "*Prior to 2004, there were two times when I was able to prove that the reports were false and that I didn't urinate in public or curse. Now this is impossible. They used to give 15 days, but now they draw up two reports at the same time and give 25 days total. They rarely used to give days in detention, but they do now, and for things less serious than preparing for or participating in actions. They are even picking up activists who have not been involved in anything for three years. I think they will have started handing out actual sentences by the next presidential elections in 2015…*"

Families of activists are not notified of their detention, and it is only sometimes that they are able to learn about what happened, as long as they react fairly quickly. The families of activists who have experienced preventive detention start looking on their own for their relatives who have not returned home.

Mikhail Matskevich is a staff member at the Lawtrend Center for Legal Transformation. He has been previously detained and subjected to administrative prosecution under Article 23.34 of the KoAP (violation of the procedures for organizing and holding mass events). On 18 July 2012, he was detained by police officers on the porch of his organisation's office, charged with using obscene language, and placed under arrest for three days. The Russian premier Zmitser Medvedev happened to be visiting Minsk that day.

Matskevich gave the following description of his detention to mission members:

> "*On 18 July 2012, I left the office* [the *Zelenaya set'* [Green Network] organisation] *at 11 a.m. I was standing on the porch, and this was at the time of Zmitser Medvedev's visit. Our friends from an eco-organisation were supposed to submit a petition at the Russian embassy, but they were detained. I wanted to head over to the Partizanskoye RUVD to find out what had happened to them. Irina Sukhiy* [chairperson of the board at Ekodom] *was detained with me. We were detained by officers in plainclothes. 'Mikhail?' 'Yes.' I showed them my passport; they took it and sat us down in their car. They showed us documents stating that they were officers of the Special Police Regiment. We were taken to the Tsentralny RUVD, where we were held for an hour, for what we didn't know. They gradually started fingerprinting us and taking an inventory of our belongings. As they were filling out documents it became clear that we were being charged under Article 17.1 for using obscene language (a guard was standing on the porch with us, and he could have confirmed that we did no such thing, but he refused to be a witness). They spent two to three hours writing up reports and protocols, and then they took us to court. They turned down our requests to call our parents or our jobs. My colleagues saw me being detained through the window. They notified my parents, who hired a lawyer.*"

Zmitser Kremenetsky is an activist from the *Malady front* organisation. He has been detained in the run-up to socially important events several times. He served his most recent administrative arrest in May 2014 before the start of the World Ice Hockey Championship. Kremenetsky told members of the FIDH and HRC Viasna mission that:

> "*My detentions started after the 2010 elections. My first detention was on 19 December 2011, the first anniversary of the presidential election. I was detained again in the spring of 2012. I spent a week out of prison, but was then detained again. We were detained either before actions or before the arrival of Russian president Vladimir Putin. Usually you get a chance to make a call in the car, otherwise people start to worry if they don't hear from you and they start looking for you. If you ask police officers to notify your family, they'll never do it.*"

Yevgeny Kontush is an activist from the National Bolshevik Party (NBP). He was detained for disorderly conduct on 23 October 2013 for five days in connection with summit meetings that were being held between CIS and Eurasian Economic Community member countries. An attempt to detain him was also made in the run-up to the World Ice Hockey Championship in May 2014 (*see below*).

Kontush confirmed the routinely secret nature of administrative detentions:

> "*The police don't explain your rights. I know I have the right to an attorney from the moment of my detention, but they just smirked when I asked for one. They didn't let me call my relatives. Your relatives, your wife—they search for you on their own and call around to all the precincts, but the police just lie to them and tell them that there is no one there by that name. Sometimes friends and relatives figure out that you've been detained: you say goodbye to your wife, head off for work, but never make it there. Your friends call your wife and ask what happened to you and then they start searching the precincts. I always ask them to call my colleagues at home to tell them I've been detained, but they never do*."

Detention

The rights and responsibilities of individuals in relation to whom administrative proceedings are being conducted are enshrined in Article 4.1. of the KoAP. In particular, such an individual has the right to know what administrative violation he or she is being charged with; to provide an explanation or refuse to provide an explanation; to present evidence; and to have a defense attorney present from the beginning of the administrative proceedings, or, in the case of administrative detention, from the time he or she is informed of his or her administrative detention.

Taken together with the provisions of the abovementioned law "On Internal Affairs Bodies," this imposes upon representatives of internal affairs bodies the responsibility to explain to the person detained the causes of his or her detention, namely the administrative violation with which he or she is being charged, and also prohibits arbitrary detention without apparent grounds.

In practice, "preventive detentions" can take place on the street or at a building's entrance and directly in the home. In any case, even basic procedures and rules are never observed during detentions. After a person is brought in to a precinct, he or she is frequently not informed of the charges against him or her, shown reports, or given copies of them. Requests to notify relatives of his or her detention are denied. The individual detained can guess his or her status by procedural actions taken like fingerprinting, removal of shoelaces, belts, and valuables, the compilation of an inventory of personal items, and a body search. No rights are ever explained.

Zmitser Kremenetsky told mission members that:

> "*In March 2012, I was sleeping at home when I was dragged out of bed and given 15 days because they thought that I had participated in some sort of action at the Russian embassy, even though I hadn't been there at all. We think that after my first detention in March 2012 they made copies of the keys to my apartment, which I rented with other activists from* Malady front. *They definitely visited the apartment when we weren't home and used the computer. I was detained about 10 times in 2012 (I spent only 12 days out of the three months of spring out of detention). I was also arrested on 22 February 2014. We were trying to travel to Ukraine because of the events taking place there. We entered Ukraine, but there Ukrainian border guards banned us from entering the country for five years. Then the Belarusian border guards called the police, who took us to the Elsky District Police Precinct. We were detained on Saturday and our trial took place on Monday. We were each given 10 days, supposedly under Article 17.1. (disorderly conduct). Our phones were confiscated, but we were able to move around freely and managed to pick up our phones and let people know what had happened.*
>
> *"On 21 February 2012, we were traveling to the trial of Kovalenko (an activist in the Belarusian Popular Front, a conservative Christian party, who was charged with hooliganism because he hung the national white-red-white flag on a Christmas tree in Vitebsk). We were stopped by highway patrol officers, who checked the driver's documents. Then we were loaded onto a bus with OMON troops. They held us until the evening, and the trial took place the next day. They gave all four of us [Roman Vasilyev, Mikhail Mussky, Zmitser Kremenetsky, and Vladimr Yeremenko] three days.*

"Things were starting to ease up a bit, but the situation worsened before the world championship. On May 5 – 6, 2014, my friend and I were working at a construction site. We went out to a store to buy some food. On our way back, people in civilian clothes ran up to us, pushed us down onto the ground, led us onto a bus, and drove us around the city for two hours. Then they brought us into the RUVD, and then we were immediately sentenced under Article 17.1. of the KoAP (disorderly conduct). For some reason I was only fined, but my friend was given 20 days of administrative arrest.

"On 14 May 2014, I landed in jail for 10 days. Plainclothes officers picked me up at home. They opened the door with their own keys. They didn't say who they were. They picked up two people out of the six people in the apartment, then they came back and picked up another person, because someone had called them. We were taken to the Tsentralny RUVD. They wrote up a report stating that we had been using obscene language. It's unclear why they said this. On May 24, right before President Putin's arrival, I was released from the TsIP. I signed out, left the building, and right away some police officers approached me. They put me in a car and drove me to the Moskovsky RUVD, where I was again accused of using obscene language and given another 10 days."

Zmitser Dashkevich, a well-known political activist and former political prisoner (see above), was confined during Chernobyl Way and during the World Championship. In these instances, police officers took advantage of his position as a former political prisoner under preventive surveillance to confine him for the maximum term of 25 days. This is why a report on his alleged failure to obey the legal demands of police officers was attached to the report on his violation of preventive surveillance, which is in and of itself a repressive measure taken exclusively against freed political prisoners.

Dashkevich told mission members that:

"*I was walking home from work on the evening of 24 April 2014. It was 9:45 p.m. People in uniform approached me, showed me their documents, introduced themselves, and asked me to go with them to establish my identity. I showed them my passport, but they said that this was not a document that could confirm my identity and told me I had to go with them to the precinct. At the precinct, they wrote up two reports: one stating that I had violated preventive surveillance (under which I was supposed to be at home by 8 p.m.) and the other stating that I had failed to obey police officers. While I was in the car, I was able to call my wife and tell her that I was at the RUVD. They didn't allow me to make any calls after the reports were written up. The next day my wife came to court, where she learned the details. She was allowed into the hearing. Usually they don't show you anything in the reports. It's only in court that you learn why you are being sentenced.*"

Pavel Vinagradau is a leader of Zmena, the youth wing of Tell the Truth!, and has participated in many actions of the Tell the Truth campaign since the summer of 2010. He was one of the most active members of the group spearheading the campaign of presidential candidate Uladzimir Neklyayev. He was arrested on 5 May 2011 after the most recent presidential election and sentenced to four years in prison for participating in the "mass unrest" that took place on Minsk's Independence Square on 19 December 2010. He was released under Lukashenko's amnesty order on 14 September 2011. The court also placed him under preventive surveillance. Over the past two years, Vinogradov has been repeatedly subjected to preventive detentions and arrests, including in the run-up to important social and political events. He spoke to mission members about his "rich" experience with administrative detention.

"*According to the police, I used obscene language three times in 2012. And I was sentenced to 'days' three times, as a result of which the authorities placed me under preventive surveillance for a period of two years. What's odd is that I didn't participate in one single action in 2012. But after each action they came to my home to take me in, sometimes at 6:30 in the morning, or they would pick me up when I left the RUVD after checking in as per the preventive regime. When I left the precinct, they would stop me and write me up for using obscene language or sometimes for disobeying a police officer, and then they would take me right to court. I would*

propose reviewing video footage, but they always made the excuse that the 'cameras weren't working.' There were times when I finished my sentence and was then picked up in a car by police officers right at the TsIP. They would drive me somewhere and then bring me back to court, where I would be given another sentence. My friends are witnesses to the fact that I never left the TsIP. They knew this because they were waiting at the entrance. Meanwhile, their register would have a note that I had been released…

"My surveillance period was due to end on 25 April 2014, and on April 24 I was due to check in at the RUVD. I took my things with me, because I was convinced that they would detain me before the World Championship. And that's exactly what happened. The officer told me we were going to court, where they extended my surveillance for another sixth months in the absence of any violations. On our way back, the inspector said, 'You know the championship is going on now. What should we do?' I offered to write a statement saying that I was leaving Minsk, and he agreed and released me for the month. I left Minsk and went to Berezino, where I spent my time until the championship ended.

"But even so they still come by my house before important events, like July 3 (Independence Day). 'You used obscene language again! Let's go to court.' And the result was another sentence. It's interesting that half the reports make note of a woman with a child who was upset by my behavior, but the only witnesses are police officers. My most recent sentence was on 13 March 2014. I was given 25 days for 'swearing and resisting' right before March 25, which is Freedom Day (a demonstration traditionally held by the opposition dedicated to the anniversary of the proclamation of an independent People's Republic of Belarus in 1918). Overall, the administrative code has been applied to me 14 times since the 2010 election, and I have been arrested 13 times. No one ever lets me call my relatives, but my wife always learns of my detention by comparing the dates of important social events to the Thursdays when I am supposed to check in as per my preventive surveillance. I once figured out that in 2012 I was arrested three days after every release. Everyone at the TsIP knows me. Some police officers even apologize before detaining me. Some of them could care less, others are ashamed, and still others enjoy it."

During the events on Maidan Square in Kiev, approximately twenty fans of the football team of the Barysaw Car and Tractor Electrical Equipment Plant from Barysaw took a picture where they were displaying Ukrainian flags and slogans supporting Euromaidan. This photo was distributed on social networks and made the KGB in Barysaw very nervous. Over the course of a week, all the people identified in the photo were subjected to administrative prosecution in the form of arrest under Article 23.34 of the KoAP (the distribution of the photograph was deemed a violation of the procedures for organizing and holding mass events). They also underwent "preventive" talks with the KGB.

Here is how one of them described the detention process:

"*My girlfriend and I were on our way back to the city. I got off the train. A police officer approached me. I could see his car parked nearby. He asked me what I had in my bag, and I told him that it was merchandise bearing the football team's emblem and that I had the receipts for it. The officer said that we had to go to the precinct. They let my girlfriend go—they weren't interested in her. They didn't take me to the railway line precinct, which was right near us. Instead, they took me to the Municipal GUVD. I was placed in a room for people who have been detained. A senior inspector told me that I had been detained for hooliganism—that I had used obscene language when I was getting off the train at 12:50 a.m. They didn't let me call anyone.*"

Radio Ratsiya journalist **Aliaksandr Yaroshevich** and blogger **Zmitser Galko**, both members of the Belarusian Journalists Association (BAZh), were detained on 6 May 2013. According to BAZh's press office, they were on their way back from Okrestina Street, where they had met participants in Chernobyl Way who had just been released from the TsIP there after administrative arrest. They had almost reached the metro station when a spetsnaz van stopped next to them and they were detained. They were taken to the Moskovskoye RUVD, where reports were compiled stating that they had allegedly failed to follow the orders of police officers. They were sentenced to three days detention.

Aliaksandr Yaroshevich told mission members that

"*When a van drove up to us and police officers got out, I understood what was happening and started running. They dragged me into the van. They were all in civilian clothes. We were taken to the RUVD. They said, 'You already know what's going in: you were in the wrong place at the wrong time.' At the time I thought, Why us? But I think it was more convenient to take us because there were two of us. We weren't allowed to call anyone and notify them until everyone left and one kind officer said, 'Call quickly before anyone sees.' We were led into a cell with bars, and it was only in the morning that we were given the reports to sign. They never told us why we had been detained, but they did take an inventory of our items. My place of work was listed incorrectly in the report. No one explained our rights to us, which I noted in the report. The reports were corrected right in court, and the charges against us were announced: 17.3 and 23.4. According to the officers, we used obscene language, waved our hands around, and failed to obey police orders.*"

Siarhei Kazakov, an activist in the European Belarus campaign was arrested after the events of 19 December 2010 and sentenced on 12 May 2011 to deprivation of freedom for three years in a medium-security penal colony for participating in the "mass unrest" that took place on Minsk's Independence Square. He was released in August 2011 under Lukashenko's amnesty order. He is now under the regimen of preventive registration. He has encountered the phenomenon of preventive detention many times.

Kazakov told mission members that

"Before the 2014 World Championship, I encountered preventive detention during anniversaries celebrated by the opposition. I was taken into the RUVD in the morning, supposedly to clear up some issues in a criminal case related to the theft of some tires, and I was released in the evening after the opposition event. This happened for the first time on the first anniversary of December 19, and for the second time in October 2011, when we were celebrating a week of solidarity with political prisoners. I was detained on the first day, released on the second day, and then later sentenced to 10 days arrest under Article 23.34 of the KoAP [violation of procedures for organizing or holding mass events].

"I am on preventive registration until 2016. As part of this, I can be summoned at different times. Sometimes once in six months, sometimes more frequently, like once a week. Whenever an important event is about to occur, people in civilian clothes are also present along with my watchers.

"On 6 May 2014, before the championship, a uniformed officer came to pick me up. He didn't show me his documents, but he did have a badge. He said that I had to come into the RUVD to find out if I was a football fan or not. We had a standard discussion about how my 'reform' was going, and there were standard questions about my place of work and so forth. I signed a paper that I had been warned that I would be liable for any violations, and then I was released on my word that I wasn't planning to violate anything.

"On May 8 the surveillance officer called me and asked to come over. I told him I was busy and then I started to get dressed... He met me by the entrance to my building and took me to the Leninskoye RUVD. We again had the same old conversation where I was warned not to commit violations, etc. Then he released me. While I was waiting at the bus stop right by the RUVD, two plainclothes officers came up to me and showed me their IDs. They took me back to the Leninskoye RUVD and put me in a cell. They told me to remove my shoelaces. Then they returned and demanded that I sign some papers. I refused. They denied my request to notify my relatives of my detention. I had been able to dial my friend's number while I still had my phone, but I hadn't had the chance to say anything. He heard the background noise and understood that something was wrong, so my family started looking for me. They took me to court a little while later. A hearing took place under articles 17.1 and 23.4 (disorderly conduct and failure to obey the demands of police officers). Those very same officers were called as witnesses. Their testimonies were exactly the same and followed the reports that

they themselves had compiled. The court handed down a punishment of 10 days for each article (instead of 20 days). Only three hours passed from the time of my detention to my arrival at the Okrestina Detention Center."

Leonid Kulakov, an activist from the European Belarus campaign, was previously detained for participating in mass events. He was most recently detained on 7 May 2014, right before the World Ice Hockey Championship. He told the mission that

"*That day I was at work until lunchtime. I'm a taxi driver, and there weren't many customers, so I went home. I got home around 4 p.m. It was very hot and I took a shower. The doorbell rang as soon as I got out of the shower. I was expecting my neighbor, so I didn't ask who it was. I opened the door and there stood people in plainclothes, saying that they were from the police and that they had received a warning that there had been some sort of scandal at my house at1 p.m. I live alone and was at work at that time, which I can prove from receipts and the meter. A blow to the chest and they flew in and said: 'Get your things together, you're coming with us.' I tried to make a call, but they were against this. But I insisted that I had the right to make a call. They allowed it. I called my friends and told them that I was being detained right in my apartment. They didn't give me any explanations at all. They just said 'You have to come with us.' They brought me to the public safety department. They said, 'We're going to write up a report under Article 17.1 saying that you used obscene language in a public place.' I said, 'But you picked me up at home!' But they told me something along the lines of my being able to prove what I did or didn't do in court. They took everything away from me: my belt, my shoelaces, my glasses. They even tore off the snap on my pants. I refused to sign any papers because they had taken my glasses, so I couldn't see what it was I was signing, and I didn't know exactly what article I was being charged under. Then they took me to the Pervomayskoye RUVD and threw me in a 2x2 m cell. To avoid freezing, I walked around the cell and crouched. I was taken to court a little while later.*"

N.S. was detained on 6 May 2014 as he was leaving his home.

"*I left the house—a car was parked around the corner. Two cheerful guys were standing there. 'How's it going? You just turned 18, we need to remove you from the registry at the Commission for Juvenile Affairs (I was listed there for an administrative violation). I understood that it was pointless to resist or run away. During the car ride, I asked to call my mother, because she should know that I was being removed from the registry. They allowed me to call her, and I also managed to send a text to a friend. They brought me to the RUVD and didn't allow me to make any more calls. There was a man there dressed in plainclothes; everyone was scared of him, and they told me that I was better off not knowing what structure he was from. He was telling everyone what to do. They searched me right away without a report, without anything. They took my belt and shoelaces. They dropped hints, saying that they were 'going to watch hockey.' They came back half-an-hour later and said, 'Remember how you were swearing' and gave me the report to sign. I refused. My lawyer came to my trial. The judge said that the report was not properly compiled and sent the materials back to be corrected. They took me to the TsIP on Okrestina Street, where I spent the night in a transit cell. The police officers said, 'Your lawyer won't help you.' I was given 10 days at my trial. The witnesses were the very same police officers who detained me. They said, 'He was walking down the street, cursing, he was peering into cars, probably looking for something to steal, so we put him in our car to take him in to the precinct. He kept swearing in the car and he was also waving his hands around' (the report only indicated that I had been swearing on the street). I was convicted under Article 17.1.*"

N.N. was arrested the day before the start of the World Ice Hockey Championship.

"*They rang my doorbell at 8 a.m. My relatives opened the door and told me that the police had come for me. I was surprised, because the police had never come to see me before. I got dressed. They were wearing civilian clothes, but they did show me their documents. We left the building and started walking. I was surprised to find that they had left a regular car near the neighboring building. We arrived at the RUVD, where I spent a long time waiting. Finally*

the investigator came out and told me to sit by the window. He started writing. I asked if we would be starting soon. He said that we were leaving for court and I could 'say everything there.' I said, 'You're making a mistake, they brought me in for a talk.' He said, 'Are you so-and-so?' 'Yes.' 'You used obscene language and grabbed a police officer.' They didn't say anything to me about my rights or ability to ask for assistance. They didn't ask me to sign the report, and they didn't even show it to me. I was able to call my mother."

Leonid Smovzh, an activist and train operator, was detained in November 2013 for participating in the Dzyady march for wearing a t-shirt reading "For a Belarus without Lukashenko." He was sentenced to five days under Article 23.4 of the KoAP for "failing to obey the legal demands of a police officer." He was most recently detained on April 26 right before Chernobyl Way 2014.

"*My friend and I arrived at the Oktyabr Movie Theater. A police officer with a camera came right up to me. He recorded me on video right up close to my face. Right before the procession left, I noticed a man in a red jacket next to me. Wherever I went, there he was behind me. We even checked, and that's what was happening—wherever I went, he went. He walked beside me for the entire procession. I called my daughter and warned her that I might possibly be detained. We reached Bangalor Square. We were standing near the frame of the metal detector at the entrance to the demonstration. We decided not to go in. We walked over to a trolleybus stop and right away a dark violet van drove up to the stop. We got on the trolleybus, and six people in plainclothes got on with us. We reached Volgogradskaya Stop, and the van followed us the whole time. Then it was joined by another van. They grabbed me and my friend and pushed us into one of the vans. They bent our arms behind our backs. They didn't show us any documents or say anything at all. They hit my friend a couple of times—he's younger, just for show. They brought us to the Zavodskoye RUVD. We were put up against the wall, and we stood like that for three-and-a-half hours with our faces to the wall. We were not given the chance to call our relatives, even though I asked various officers and the lieutenant colonel who compiled the report five times. We asked for a lawyer at the RUVD, but we were never given one. We only had a lawyer at court. I immediately asked for copies of the protocols, which they gave to us, but I didn't sign them. I just wrote down what exactly had occurred. We spent March 26 and 27 in the TsIP on Okrestina Street. We were taken to court on Monday, March 28. After I was released, they said, 'Why are you picking up your things? We're going to lock you up again.' This was at the RUVD.*"

The activist **Aliaksandr Kurets** was detained on May 17 during the action Food Not Bombs, which took place near Mikhailovsky Square, where food was distributed to homeless people. Aliaksandr described his detention to FIDH and HRC Viasna mission members:

"*On May 17, I was driving along Zakharov Street towards the city center in the direction of Simon Bolivar Square, which was one of the gathering points for the Food Not Bombs action. My friends and I had agreed to meet up there. As I approached the intersection, I decided to turn around and find something to eat. I noticed that highway patrol officers were standing around. I ate and left the café around 2:45 p.m. I noticed an officer looking at me, and I understood that I wouldn't be able to avoid a meeting with him. He indicated that I should stop. A white van stood next to his car. He came up to me, showed me his documents, and introduced himself. I handed him my documents and then he asked me to show him my fire extinguisher, warning triangle, and first aid kit. This was my friend's car, not mine, so I had a hard time figuring out where everything was. I asked if I could call the owner, and I started to dial his number, but then people in plainclothes came up to me and took away my phone so I couldn't complete my call. They put me in the highway patrol car and drove me to the Partizanskoye RUVD. On the way there, they told me that they would write up a report that I didn't have a fire extinguisher and that they would then release me in a couple of hours. At the RUVD they handed me over to the duty officer. They led me into an office and started to take down my explanations. After this, they told me that a crime had been committed and that the suspect had hidden in a similar car. They took away my documents and phone. The photographed and fingerprinted me, and then they started inspecting my personal items, but they didn't have a search warrant. I had a t-shirt about political prisoners and little calendars in my backpack. When they saw these things, the lieutenant took them to*

his supervisor and came back without them. Five minutes later, a plainclothes officer came in. He started to fill out papers and asked for my belt and shoelaces. Then he started to take an inventory of my personal items. The supervisor came in and asked why I had been driving that car and led me away to inspect the car. The others continued taking an inventory of my items in my absence. Twenty minutes later, I was taken back to a different room and not to the room where my personal items were. I signed an explanation, the car inspection report, and the highway patrol report. I never saw any of these documents in court. Then they took me to a different room, where a case file was already prepared under Article 17.1. They asked if I knew what it was, and I said that I could guess. I didn't ask if I could call anyone, I was upset and confused. But my friends saw me when I went out to inspect the car. Then I was taken to the TsIP until Monday, May 19."

The testimony of **N.F.**, one of the moderators of the "silent actions" that take place on social networks, is extremely revealing. N.F. traveled around cities in Belarus in the spring and summer of 2011, when any opportunity to express disagreement was suppressed by the authorities and people began to gather for silent meetings, where they clapped their hands instead of chanting slogans. These actions would take place on Wednesdays in the city center and were always suppressed by the police. Many participants were prosecuted for administrative violations under Article 17.1. Previously, in 2011, **N.F.** was detained for participating in "silent actions" in Minsk. He was also detained at work on 3 July 2011 by KGB agents and taken to the RUVD, where a report on an administrative violation under Article 17.1 of the KoAP (disorderly conduct) was written up in relation to him, and he was placed under arrest for 10 days. During his detention, he was visited by KGB agents, who held "preventive talks" with him: they tried to intimidate him and persuade him to cooperate with them. On 3 July 2012, KGB agents conducted a search of his apartment and confiscated all his computer equipment. As a result, like many other administrators of opposition social networks he was placed under arrest for seven days for "using obscene language in a public place." He was most recently arrested on 7 May 2014, right before the World Ice Hockey Championship, for a period of 15 days.

"*On 3 July 2011, KGB agents came to see me at work at the club. They took me in for a 'preventive talk.' I was totally convinced that they were taking me in just for a talk, but instead they took me to the RUVD and wrote up a report under Article 17.1 that I was swearing on the porch of the club, even though they had picked me up inside the club. They didn't allow me to call my family. I was given 10 days. Then, when I was serving this time, I was summoned for a talk in a separate room. They threatened me with criminal charges and a KGB pretrial detention facility. After this, I was invited to meet with KGB agents one time. I came, but I couldn't tell them anything about the opposition, because I don't know anyone. Then they called my place of employment and put pressure on them so that I was fired. After that, I was unable to find work at other clubs. I was made to understand that they had been warned. That was when I admitted my guilt. I hadn't had any experience, and they told me that they would sentence me to less time if I admitted my guilt, so I confessed.*

"Then I understood everything. When they came to my place of registration on 3 July 2012 (Independence Day), I turned off my phone. On 29 August 2012, which is Lukashenko's birthday, anyone they had any information about, including administrators of social networks, was arrested. As soon as my girlfriend took the dog out for a walk in the morning, they opened the door, and plainclothes officers arrested me right in my bed. They searched the premises and took all my computer equipment. They put me in a car without plates. They beat me and threatened me, saying that my girlfriend would be expelled from the university and my parents fired from their jobs. I gave them the passwords to the social networks, because I hadn't updated anything for a long time. I was again written up under Article 17.1 and given seven days. The same thing happened to many other social network administrators.

"Since then I have realized that I really don't present any interest to them. But I happened to get on the list of unreliable people and would apparently be held every time. I wasn't arrested for some time. True, the duty officer did summon me for 'talks,' but I never went. Instead I said I would only come if I received a notification. I thought that was it, that the epic of my civic-mindedness had reached an end. But they recycled the same old list before the World Ice Hockey Championship….

"Late in the evening of May 6 two officers from criminal investigations (that's how the police officers introduced themselves) came to the home where I am registered. My mother didn't open the door, and my neighbor started arguing with them. I had two options—leave before the championship or go in for a preventive talk as others had done and be released after this. So the next morning I called the duty officer myself and explained that people had come for me, but I didn't know who they were or what they wanted. The duty officer told me that I was not on the wanted list and that 'they would find me if they needed to.' He called back half-an-hour later and asked me to come in for a 'preventive talk.' I told my mother where I was going. She wanted to come with me just in case. Later I understood that they wanted to detain me as soon as I left the building entrance. There were two people in plainclothes waiting, but since I was with my mother, they didn't try to detain me right then and there. The duty officer was amazed that we showed up. He asked us to wait in hallway. First he invited my mother into his office. As soon as she went in, two officers came up to me and asked me to go to the RUVD with them. I asked them to let me tell my mother, but they told me they would take care of it (they didn't, but my mother understood everything when she didn't find me in the hallway).

"At the RUVD, they started questioning me about my previous prosecution, and I saw an investigator writing something down. But I understood that I would not be leaving when he suddenly asked me to show him my personal items and lay them out on the table. He printed out some documents and handed them to me and another officer. They sat the duty officer down next to me. He said, 'So, you've been swearing again?' Then the deputy chief came in, took the report, called someone, and said, 'Write up another report under Article 23.4 (failure to obey the legal demands of a police officer). I understood what an utter fool I had been. They took me to court after another hour-and-a-half. There I was given 15 days."

It's no surprise that activists who have learned through bitter experience try to avoid another detention. **N.K.** said,

"*I had two detentions that were 'successes for the authorities.' Here's how it usually goes down: a car is parked near your building, there are 3 – 5 people in plainclothes. They stuff you into the car without introducing themselves and drive you off to the RUVD for your place of residence. As soon as you get there, they say, 'How could it possibly be that you were cursing?' There are no more witnesses—all the witnesses at the trial are police officers. This happens before political events like Putin's visit. At the time they knew there would be some sort of protest action, but they didn't know who would be protesting. They took in everyone who might possibly hold the protest. When we were already in detention, we read in the papers that an action had been held. Then our friend brought a package for everyone who was serving administrative detention on Okrestina Street, and he ending up staying there himself—I think he was detained for participating in the action. They came for me on May 6, I think it was, right before the World Championship. They rang the doorbell at 7 a.m. I had already heard rumors that this would happen. I was prepared. I live on the first floor, so I jumped out the window. I returned in the evening and saw that everything was quiet in the courtyard, so I gathered up my things quickly and left town. They came by again at 6:30 a.m. and asked if I was home. My relatives said I wasn't. I turned off my phone. This lasted from May 6 – 8.*"

Court hearings of administrative cases

Pursuant to Article 2.8. of the KoAP, an individual in relation to whom administrative proceedings are being conducted has the right to a defense attorney. A judge or an official from the body that is conducting the administrative proceedings must explain to an individual in relation to whom administrative proceedings are being conducted his or her rights and take measures to ensure that this individual has the opportunity to make use of all the methods and means for his or her defense established in this Code.

The provision stating that an individual subject to detention has to the right to a defense attorney does not guarantee actual access to legal assistance. Unlike criminal proceedings, where the body

leading the criminal trial and the territorial bar association are obligated to appoint and provide a defense attorney, including when the suspect or defendant demands one, this provision is of a declaratory nature in administrative proceedings. In particular, the law does not directly indicate what methods courts or internal affairs bodies have at their disposal to exercise the rights that would ensure that the person detained has the actual ability to select a defense attorney and meet with him or her to sign a contract. On the other hand, the law does not impose on territorial bar associations the responsibility to provide people detained for administrative violations with such opportunities. There is also no provision for providing legal assistance to a detained individual using budgetary funds, with subsequent collection of these funds in the event the person is found guilty, even though this provision is enshrined in the Code of Criminal Procedure.

Meanwhile, the violation of the right of an individual against whom administrative proceedings are being conducted to a defense attorney serves as grounds for revoking the ruling relating to him or her on the imposition of administrative penalties.

When hearing administrative cases, the court must consider the rule on the presumption of innocence, as it is enshrined in the KoAP: an individual may not be held liable for an administrative violation before his or her guilt in committing a violation stipulated in the KoAP has been established following the procedures set forth in this Code.

The burden for proving the guilt of an individual against whom administrative proceedings are being conducted lies with an official from the body conducting the administrative proceedings. The individual against whom administrative proceedings are being conducted has no obligation to prove his or her innocence. The circumstances set forth in the report on the administrative violation and the ruling on the imposition of administrative penalties cannot be based on assumptions. Any doubts regarding the validity of the conclusion that a person against whom administrative proceedings are being conducted is guilty must be interpreted to this person's advantage.

A special feature of court hearings in so-called "preventive detentions" in Belarus is that only the testimony of police officers is used as the basis for court rulings. Testimony provided by other witnesses that is entered under a motion from the "violator" is viewed with suspicion by the court because it contradicts the testimony given by police officers. The typical phrase used is that "there is no reason not to trust the testimony given by police officers." Zmitser Dashkevich, who has been detained on numerous occasions, explained that he never files a motion to call witnesses, because then he will have to spend another several days in a concrete cell at the RUVD (these cells are 2 x 2 m and do not have toilets or water) while the court makes it decision and summons the witnesses. This means that many people even perjure themselves just to avoid a stay in this cell.

Zmitser Kremenetsky shared his experience that

> "*at the Tsentralny Court, they always drive you there during lunch break because no one is allowed to be in the building during this time. So while they're kicking everyone else out, they're bringing us in through the back door. No one is present. It is the quickest trial—just a few minutes. My attorney came to the trial, of course, but I have never once seen an attorney help at a trial. The very same police officers were the witness against us.*"

N.G., the football fan from Barysaw, said,

> "*They brought me to court in the morning. The same police officers were sitting in the hallway, but they were dressed in plainclothes. In court I said that I wanted my lawyer and I also asked to call a witness—my girlfriend, who saw me being detained, and to look at footage from a security camera. The court set a time for 2:30 p.m. the next day. I was taken back to the RUVD. I was allowed to make three calls, but they warned me that if someone else came to court to support me, they would add another article to my charges: organizing an unauthorized action. My attorney was at court. We filed a motion to review the footage from the video camera. My girlfriend also spoke, but it was all in vain. I was given five days.*"

Mikhail Matskevich (see above) spoke about his experience at the court hearing following his

detention at an action on 24 December 2010 on the falsification of the elections. Because this was a tense political time in the country, his detention was harsher than usual and even the court hearing in the administrative case took place in a closed courtroom.

> "*This was an action of solidarity with prisoners at the TsIP on Okrestina Street that took place at 7:30 p.m. During the action we held candles as a sign of solidarity. We ended the action because we could see that a bus had appeared with trainees and that plainclothes officers were starting to detain people. We were put in the bus with the trainees, and we were able to call our families and let them know what was happening. We were taken to the Moskovskoye RUVD. On the way there we were beaten and humiliated. The women were allowed to sit on the seats, but the guys had to sit in the aisle, where we were kicked. We spent about three to four hours at the RUVD. They wrote up reports under Article 23.34 on violation of the procedures for holding a mass event. We spent the Saturday and Sunday before the trial in the detention facility. The trial was on the 27th. We were each given10 days and the courtroom was closed, even though the ruling stated 'it was ruled in an open court hearing…' They didn't let our families in. My relatives hired an attorney, but I refused him because I didn't know about this. At the RUVD they gave me a list of my rights and responsibilities and asked me to sign that I had read it, but I refused. The judge paid no attention to the quality of the documents, and I specifically did not ask any questions in court because of the psychological pressure: the judges and the secretary were sitting right in front of me, while my escort guards were right behind me. I was forced to hold my pants up because I wasn't wearing a belt (they had taken away my belt and shoelaces), so I wanted it all to end quickly.*"

In an interview about Matskevich's detention in 2012, Alina Kurilenko noted that "Police officers who had been stationed on Novovilenskaya and Orlovskaya streets were the witnesses. They got confused when they were testifying. According to their testimony, Sukhy and Matskevich used obscene language and waved their arms around. Sukhy apparently swore so loudly that she could be heard from 50 meters away and she did not react to any reprimands. The police officers said that Matskevich acted very aggressively. Sukhy refused to sign the report and stated in court that she was shown this document immediately following her official detention."[20]

Matskevich himself made the following comment to FIDH and HRC Viasna mission members:

> "*At court I was sentenced to three days arrest. The two plainclothes officers that detained us appeared as witnesses. My colleague came as a witness to my detention, but the court did not take his testimony into account. My attorney only appeared in court. They refused to summon him at the RUVD.*"

Leonid Smovzh (see above) said:

> "*At my trial on April 28, a civilian in plainclothes was running everything—all the judges ran to confer with him. The report stated that we were detained at 61 Surganova Street, but we were actually detained on Volgogradksaya Street. One person—an officer in plainclothes—appeared against us. I asked to call witnesses—five people who we were traveling with. They questioned one witness, Nastya, but the judge said that there was no point in questioning a second witness because 'the testimony would match what the first witness said.' Even their witness, the one in plainclothes, said in the end that I had not used obscene language after a long conversation. Then my attorney asked, 'So what was the purpose of this detention?' The judge kept leaving the room for consultations. The judge ruled that there were no grounds not to believe the officer. The judge himself never expected that the testimony of the five witnesses would be the same. The police officers got confused when they were testifying. There's a video recording of us getting on the trolleybus. Yury Rubtsov saw how they were following us and went up to the plainclothes officers. While we were still at the stop, he said 'Go ahead, arrest us here so we can put an end to this comedy. We can see that there is a van waiting and that we are being followed.' The person in plainclothes said he was a journalist, not a police*

20. http://naviny.by/rubrics/society/2012/07/18/ic_news_116_397682/

officer, but then at court it turned out they were all officers. We were given 20 days (10 and 10). I was not handed the court ruling. The appeals trial took place on May 23. The sentence was upheld. No one was there except for me and my son-in-law. It all went quickly. I brought my son-in-law along in case I was charged again and detained."

Aliaksandr Kurets (see above), a participant in the Food Not Bombs action, told mission members that in his case the judge of Partizansky District read through the case very quickly at the beginning of the trial.

"*I filed a petition to read the case materials, because I had not seen them. My lawyer and I read through them. There were no reports from the highway patrol officers. All the documents had been typed up on a computer. There were mistakes in them, and it was written on all of them that I had refused to sign them. According to the report, I was detained at 2:30. There was a summons for August 2013, and also a report that the highway patrol officers stopped me, that I showed them my documents, and then started swearing. There was one witness for the prosecution—a highway patrol officer who was in the car that stopped me. We made a motion to summon his partner, who had written up the report and spoken directly with me. The judge called the highway patrol and was told by the supervisor that he was sick. We made a motion to summon the lieutenant who wrote up the report. He said that he gave me everything to read and also copies that were somewhere on the table. The explanation was lying around somewhere and was of no significance to the case. The judge read through the evidence quickly and left to issue her ruling: 15 days. I took the ruling and we agreed to file an appeal. The judge explained in detail that we had to pay a fee and submit the appeal within five days. Two hours before the end of my sentence I was taken into a room where a duty officer from the Partizanskoye RUVD was sitting. He said that I had been detained. I was taken to the Partizanskoye RUVD and handed over to an investigator from the criminal investigations department. I sat there for 15 – 20 minutes while they were deciding what to do with me: the head of the RUVD called and I heard him say, 'Make sure he leaves the RUVD at 2:30 p.m.' A lieutenant colonel from the criminal investigations department arrived. We went into an office to have a talk with him. He called me an anarchist; he interrogated me and asked about the Belarusian Popular Front. He tried to influence me to cooperate with him, i.e. could they call and find out when things were supposed to happen. They didn't ask anything about the t-shirts and calendars, which were not returned to me. The inventory lists that 't-shirts and calendars containing anti-government content were confiscated*."

Leonid Kulakov described the court proceedings in this way:

"*The judge said, 'Plead guilty and you'll receive a shorter sentence.' I refused and said that I didn't trust him. He smirked and said, 'Listen, no one trusts us. Take him back and bring him here tomorrow with witnesses.' I was taken back to the 2 x 2 m cell for the night. In the morning, they threw an alcoholic into my cell before he was sent to a medical labor center. I heard them say, 'Put him in with the political prisoner.' They didn't give me anything to eat or drink. They brought me back to court again the next day. The judge started the hearing immediately without saying anything about my rights or an attorney. From my experience at previous trials, I know they give you the maximum if you ask for an attorney. The attorney my friends hired did not make it in time. He got there just as the trial was ending. No documents were given to me. It was only later that I was able to receive them with my attorney: the report filed by one officer stated that I swore on the street, but the report filed by another officer said that I swore at home. I figured I would get 15 days and I told the judge that I could survive anything he gave me, but he gave me 10 days. They took me to Okrestina Street. I spent two days in a terrible cell. Because I used to live in an orphanage, they didn't accept any packages since I don't have any close relatives. They gave me something to eat only on the third day. My stomach ulcer opened up. As I was leaving the facility at the end of my sentence, one officer said, 'So, do you think we'll meet again soon?'*"

N.D. told mission members that

> "*They brought me to court. They read the charges. I said, 'That's a lie. I have witnesses who will say that I was not on the street at the time, that I was putting on my pants at home at that time and that I went outside later.' The judge called the officers. They said, 'We were driving along our route. We detained him near his house. He didn't want to get in the car.' A second witness said the same thing. I said, 'Aren't you ashamed to lie?' They said, 'No.' At 2 p.m. the judge said there would be a sentence. I was taken back to the TsIP. They took my shoelaces and then took me to court. I was given 10 days and 10 days. My mother came to court, but she was not allowed into the session.*'

When the trial of **Aliaksandr Yaroshevich** began, he filed a petition to have his attorney present,

> "*but the judge said that he wasn't there. I insisted that my attorney definitely was there and that I wouldn't say anything without him. I also asked that my friends be present in the courtroom. At first the judge didn't want this, but then she let everyone in, along with my attorney. The proceedings began. My petition to summon a witness was denied. The trial went on until the evening. Once my attorney got there, they started following the rules. My attorney pointed out that there were contradictions in the testimony given by witnesses for the prosecution, like who grabbed me by the arm, who displayed his identification, etc., but the judge did not acknowledge this. The judge decided to give me 10 days for each article, but it ended up totaling 12 days.*"

After **N.F.**'s detention, described above, he was brought to court.

> "*At court I said that we're all adults, that we all understand what's going on, and that they already knew that it had been a long time since I participated in any civil actions. The judge said, 'But you must understand that an important event is taking place in our country right now (the World Championship), and you are known for using obscene language in public, so what if you suddenly go and demean the honor of our country during this event?' The judge called witnesses. At that time I had not laid eyes on a report, I had no idea what was in it, and I had not been given a copy. One witness said that they had invited me in for a 'preventive talk.' The judge asked why. The officer explained that it was in connection with the World Championship and that while he was doing this, I threw myself at him and tore his jacket. The judge asked a leading question: 'Did he resist or did he fail to obey your legal demands?' The witness said that I pushed him away from me and tore his jacket. I asked him to show how this happened with a guard. He shoved the guard in the chest. I noted that if this was what had happened, then it was impossible that I tore his jacket, but the judge said that that had no bearing on the case. A second witness maintained that I was using obscene language as I left the RUVD, and repeated the same story about tearing the jacket word for word. I tried to get him to clarify how exactly I tore the jacket by demonstrating it on a guard. He yanked at the guard's sleeve. So there was a clear difference of opinion in the testimony of the witnesses that was right there for everyone to see. But the judge stated that 'he had no reason not the trust the testimony given by the witnesses.*'
>
> *"They brought me back to the RUVD and the deputy chief asked me how many days I was given. I answered, 15. He said, 'What do you mean 15? Who was the judge?' and started making phone calls. Then I was moved to the front of the line and taken to the TsIP. They called and said they were bringing in a political prisoner and I was again moved to the front of the line. When I was released, the duty officer summoned me and started to fill out my release papers, but I could see two officers with stars emblazoned across their chests coming my way to question me. I thought that they'd give me another sentence until the end of the championship. They put me in a car, saying that 'they couldn't let me walk around the city with such an appearance.' They drove right by my house and to our precinct. The chief came in, asked for the ruling, and asked why I hadn't admitted my guilt and then told them which organisations I belonged to. 'Do you want another sentence? Do you admit your guilt?' I responded that I admitted that I was in the wrong place at the wrong time. There were three days left until the end of the championship. He told them to hold me for another half-hour and then release me. When my mother didn't see me come out of the TsIP, she started calling everyone and letting them know.*"

Pursuant to Article 11.12. of the PIKoAP, a ruling in a case on an administrative violation takes legal effect upon the expiry of the period for appealing or protesting, if the ruling has not been appealed or protested. However, a ruling on the imposition of administrative penalties in the form of administrative arrest is executed immediately. In other words, any appeal must theoretically be made after the individual begins serving his or her sentence.

Appeals

A ruling may be appealed by the individual in relation to whom it was issued, the victims, their representatives, or a defense attorney, and may be protested by a prosecutor. A state fee in the amount established in the annex to the Tax Code (Special Part) is collected from the complaint depending on the type and size of the imposed penalty. Failure to pay the state fee means that the complaint will be returned to the individual who submitted it (Article 12.2. of the PIKoAP).

The state fee for the imposition of an administrative penalty in the form of administrative arrest is 150,000 rubles. The periods for hearing an appeal are such that the review of the case generally takes place after the execution of the decision: within three days an appeal that is received by the court is forwarded, along with the case, to a higher court, which must hear it within a three-day period. These timeframes do not take into account the time that the complaint is located in the detention facility before it is sent to the court or the time it takes to transfer the case between courts.

Thus, the right to appeal a ruling on the imposition of an administrative penalty in the form of administrative arrest that has not yet taken legal effect is, as laid out in the law, more often than not declaratory and generally has as its goal not the protection of rights but the creation of conditions for rehabilitation or the collection of compensation for the illegal deprivation of freedom.

It should also be taken into account that, pursuant to Article 11.12(2) of the PIKoAP, a ruling on the imposition of an administrative penalty in the form of administrative arrest or deportation is executed immediately. At the same time, pursuant to Article 12.4(1) of the PIKoAP, an appeal of a ruling on the imposition of an administrative penalty in the form of administrative arrest may be submitted over a period of five days. In practice this means that an individual sentenced to administrative arrest begins serving his or her sentence under a ruling that has not yet taken legal effect and has the right to appeal this ruling over a period of five days while at the same time being located in complete isolation.

It is abundantly clear that individuals in detention cannot pay the state fee on their own while they are in the TsIP or send in an appeal within the period of time indicated. Therefore, many of the people detained told the mission that their attorneys were valuable not as a means of defense in court, but because of their ability to visit the detention facility and submit an appeal. The majority of the individuals interviewed by the FIDH and HRC Viasna mission appealed court rulings, even all the way up to the Supreme Court, but all the rulings were upheld. Many are awaiting communications about letters of complaint sent to the UN Human Rights Committee.

N.N. told FIDH and HRC Viasna mission members that:

> "*When I left court, I said that I wanted to write a petition. I was told that I could write it at the TsIP. When I got there, I asked for a pen and a piece of paper, but they didn't give me anything. My attorney came to the TsIP, and a plainclothes officer also came. He wanted to know why I had been detained. I told him, and he said that he would figure it out and that it seemed 'strange.' My attorney filed my appeal after my release.*"

Zmitser Kremenetsky (see above) told mission members that:

> "*In order to appeal a sentence, you have to pay a state fee. This was impossible while I was in the TsIP. Also, no one will accept your complaint. I can write one, but no one will send it. While I was there the only thing I did was write a complaint to the warden about detention conditions—that was possible. But the guard in the hallway doesn't have any paper. You can*

request some from the duty officer, who comes by twice a day, but that's complicated. We wrote our complaints on our own paper, provided we had some."

N.F. provided further clarification:

"*My mother notified HRC Viasna when I was detained. My attorney was able to come see me after two days, and then we filed an appeal three days later. My mother didn't even know how many days I'd been given. She only learned this from my attorney, when he visited me at the TsIP.*"

Pavel Vinagradau (see above) worked out a system over years of experience:

"*Every time I appeal up to the Municipal Court, and in especially outrageous cases I go all the way up to the Supreme Court (this has happened three times). But nothing has ever come of it. If I'm not home by 8 p.m. my family knows that I have been detained, so my attorney gets to work right away. But I don't think that an attorney ever helps in these cases. I hire him for 'historical purposes' because I have to have some way to collect documents. Then he can visit the detention center. He usually comes one time.*"



Pavel Vinagradau released from TsIP, Okrestina street, Minsk
Credit: svaboda.org

Mikhail Matskevich (see above) told the mission that in his case

"*A cassation appeal was filed to the court's 2012 ruling. I didn't try to appeal it any further, because there was no point and one appeal is enough to submit to the UNHRC.' In the 2010 ruling against Matskevich "we appealed it all the way up to the Supreme Court. The Minsk Municipal Court refused the appeal because we supposedly missed the deadline (five days under the PIKoAP), but we had actually appealed within this period because this period was reinstated due to the fact that I could not file an appeal because of my detention. Because of a violation of procedural actions, the Supreme Court decided to send the ruling back to a different judge at the same court to correct the violation. The other judge upheld the ruling. We appealed this ruling again, and it was again upheld. We are now waiting for communications from the UNHRC about a letter of complaint.*"

To make matters worse, some victims of arbitrary detention who try to defend their rights are subjected to additional repressions. **N.G.**, the football fan who was subjected to administrative detention, disputed his detention at all possible levels, but the ruling was upheld.

"*Problems arose for me when I complained to the prosecutor's office about the actions taken by police officers. When I left the investigatory committee, where I waited an hour-and-a-half to submit my complaint on my first detention, a car cut me off on the street right away and people in plainclothes ran up to me. It's lucky that I recognized one of the officers, who had detained me previously, otherwise I would have punched them in the faces as if they were bandits. I was immediately taken to the Narcotics Department at the RUVD. They told me they had information that I was involved in drug dealing and showed me a search warrant. Then we went to the place where I am registered, but they didn't find anything. They did a drug inspection, then they searched the premises where I live, but they didn't find anything. They returned my things to me at the precinct and I was able to call people and tell them where I was. Then they said that they were detaining me for three days. It was during those days that the Barysaw Arena was due to be opened. I was not released. The same officer who detained me the first time came and said that I had used obscene language. I didn't sign the report, and they didn't let me use the phone again. The judge*

was the same one I had had before. She said that 'I understand your problems, but I can't give you less than 10 days.' My friends and family learned what had happened to me after I was sentenced by calling around to the different detention facilities and the Main Internal Affairs Directorate. I haven't appealed my second detention yet because I'm scared. While I was serving the 10 days, the deputy chief of the RUVD came into my cell and threatened me: 'Why are you connecting with political activists—you'll just serve more time!' The prosecutor's office sent him my first complaint, so he was angry and threatened me with a new sentence when I was leaving…. I wrote a statement that I had no claims against him."

IV. Conclusion and Recommendations

The numerous cases of arbitrary detentions as part of administrative proceedings that have been noted in Belarus over recent years, and especially since 2006, show that a persistent practice of using administrative detention as a way to pressure political opponents of the regime has taken hold in the country.

The testimony of activists subjected to arbitrary administrative detention (in most cases many times) gathered by the FIDH and HRC Viasna mission goes to show the premeditated preventive nature of their arrests, mainly in the run-up to significant political or social events, or to planned actions opposing the regime. The rights of activists, including the right to appeal, are violated at all levels during their detentions and court proceedings.

Current Belarusian law protects citizens from arbitrary detention, and violation of this law should be criminally punishable. However, this is not possible when the Prosecutor's Office and the Investigatory Committee do not carry out a proper investigation, even though the corresponding functions are assigned to them.

The absence of the necessary procedural guarantees that the rights of individuals detained in administrative cases will be observed makes it possible for them to be ignored by bodies that conduct administrative proceedings and creates conditions where individuals may be illegally prosecuted.

Administrative procedural law prevents individuals assigned administrative arrest as an administrative penalty from effectively exercising their right to review a ruling.

Despite the fact that the international community has condemned the practice of politically motivated arbitrary administrative detentions, the Belarusian government continues to fail to take measures to eradicate this practice and even rejects its existence.

Recommendations

To the Belarusian authorities :

- Immediately stop persecuting opposition activists of all kinds and human rights defenders in Belarus;

- Execute the 2004 UN WGAD recommendations;

- Reconsider the legal framework of the Administrative Code and develop legal safeguards that would impede the falsification of administrative violations by police and the ensuing arbitrary detentions. In particular, administrative charges should be valid only if supported by evidence, including statements from independent witnesses who have no stake in the outcome of the case.

- Conduct effective, impartial investigations of individuals who have violated citizens' rights, including, and especially, in each case of illegal detention; to achieve this, give legal authority to bodies of the Public Prosecutor's Office to conduct investigations at the same level as the Investigatory Committee; Establish criminal, civil and administrative sanctions for violations of legal procedures (arrest, interrogation, treatment of detainees);

- Establish rules to provide persons detained in administrative cases and subjected to punishment in the form of administrative arrest or deportation with legal assistance following rules identical to those set forth in criminal procedural law;

- Establish reduced deadlines for a higher court to review the appeals of people subjected to administrative arrest; in these cases, substitute at least advance payment of the state fee with collection of this fee in the event the appeal is dismissed;

- Provide for the possibility, stipulated by law, for the public prosecutor or judge to suspend execution of administrative arrest in the event a ruling is appealed;

- Adopt all legal and administrative measures to prevent acts of torture on the territory of Belarus;

- Carry out prison reforms to improve detention conditions;

- Conduct judicial reforms that would remove judges and the Bar from the oversight of the Ministry of Justice and would separate the functions of trial and arraignment;

- Implement the recommendations of the UN Human Rights Committee, Special Rapporteur on the situation of human rights in Belarus and other UN Human Rights mechanisms;

- Issue a standing invitation to UN special procedures, and respond positively to their requests to visit the country according to their terms of reference;

- Restore the OSCE office in Minsk according to its mandate and cooperate fully with the OSCE mechanisms on Human Dimension, notably ODIHR. Conform with the OSCE Human Dimension's commitments in particular in the field of the Rule of Law and relating to civil and political rights.

To international organisations:

- Use all the political and diplomatic leverages at their disposal to make Belarusian authorities execute the aforementioned recommendations and the 2004 UN WGAD recommendations;

- Use all the political and diplomatic leverages at their disposal to make Belarusian authorities cooperate effectively with the UN Human Rights Council and the UN Office of the High Commissioner for Human Rights and the UN human rights bodies, in particular with the Special Rapporteur on the situation of human rights in Belarus;

- The Human Rights Committee should include the issue of arbitrary administrative detentions in its list of issues for the upcoming 2015 UPR review of Belarus.

- Keep calling for the immediate release and rehabilitation of all political prisoners and urge the Belarusian authorities to immediately put an end to the crackdown on political opposition, lawyers, journalists and human rights defenders;

- Fully use EU diplomatic channels in Belarus to optimize the EU's direct support to harassed human rights defenders, journalists and detained political prisoners, through concrete local demarches and visits;

- OSCE Office for Democratic Institutions and Human Rights (ODIHR) should closely monitor the situation in Belarus, and the OSCE Parliamentary Assembly should follow-up on the issues raised in this report, and invite its Belarusian members to take the relevant legislative initiatives to bring domestic law into conformity with international human rights standards in this field.

Annex 1

A list (probably incomplete) of citizens subjected to preventive detentions prior to or during the World Ice Hockey Championship.[21] Compiled by HRC Viasna.

1. Zmitser Dashkevich - detained on 24.04.2014 – 25 days of arrest *(go out on May 19);*
2. Alexander Frantskevich – detained on 25.04.2014 – 25 days of arrest *(go out on 20 May);*
3. Yury Rubtsov - detained on 26.04.2014 – 25 days of arrest. Left the TsIP on May 21, but was detained in Gomel and sentenced to five days of arrest *(on May 27 he was taken to the hospital from the IVS after a 30-day hunger strike);*
4. Leonid Smovzh – detained on 26.04.2014 – 20 days of arrest *(got out on May 16);*
5. Nikolay Kolos - detained on 26.04.2014 – 15 days of arrest *(got out on May 11);*
6. Denis Karnov – detained on 26.04.2014 – 20 days of arrest *(got out on May 16);*
7. Aliaksandr Kurbtasky – detained on 26.04.2014 – 20 days of arrest *(got out on May 16);*
8. Aliaksandr Stukin – detained on 26.04.2014 – 20 days of arrest *(got out on May 16);*
9. Valery Tomilin – detained on 26.04.2014 – 20 days of arrest *(got out on May 16);*
10. Uladzimir Novikov – detained on 26.04.2014 – 15 days of arrest *(got out on May 11);*
11. Andrey Tenyuta (Gomel) **–** detained on 05.05.2014 – 10 days of arrest *(got out on May 15);*
12. Nikolay Demidenko – detained on 05.05.2014 – 20 days of arrest. Taken from the TsIP to the Tsentralnoye RUVD, where he was *released on the morning of May 26;*
13. Mikhail Mussky – detained on 05.05.2014 – 20+1 days of arrest *(got out on May 26);*
14. Ilya Volovik – detained on 06.05.2014 – 10 days of arrest *(got out on May 16);*
15. Siarhei Poznyak – detained on 06.05.2014 – 10 days of arrest *(got out on May 16);*
16. Kirill Ermolovich – detained on 06.05.2014 – 10 days of arrest *(got out on May 16);*
17. Aliaksandr Polyakov – detained on 06.05.2014 – 10 days of arrest *(got out on May 16)*. Again detained on May 24 and fined.
18. Leonid Kulakov – detained on 07.05.2014 – 10 days of arrest *(got out on May 17);*
19. Anastasiya Kukhta – detained on 07.05.2014 – 17 days of arrest *(got out on May 24);*
20. Aliaksandr Orlov – detained on 07.05.2014 – 20 days of arrest *(got out on May 27);*
21. Stanislav Rachkel (Grodno) **–** detained on 08.05.2014 – 10 days of arrest *(got out on May 16);*
22. Vladislav Zapasov – detained on 08.05.2014 – 10 days of arrest *(got out on May 18);*
23. Andrey Tkachev – detained on 07.05.2014 – 15 days of arrest *(got out on May 22);*
24. Vyacheslav Zavinevsky (Grodno) **–** detained on 08.05.2014 – 10 days of arrest *(got out on May 16);*
25. Siarhei Matskoyt – detained on 07.05.2014 – 20 days of arrest *(got out on May 28);*
26. Zmitser Polienko – detained on 08.05.2014 – 10 days of arrest *(released from the TsIP);*
27. Zmitser Yushkevich – detained on 08.05.2014 – 20 days of arrest *(got out on May 28);*
28. Siarhei Kazakov – detained on 08.05.2014 – 20 days of arrest *(got out on May 28);*
29. Danil Goncharov – detained on 09.05.2014 – 25 days of arrest *(got out on June 2);*
30. Aliaksandr Morozov – detained on 09.05.2014 – 10 days of arrest *(got out on May 12);*
31. Siarhei Kuzmich – detained on 08.05.2014 – 15 days of arrest *(got out on May 23);*
32. Oleg Kerol – detained on 13.05.2014 – 25 days of arrest *(got out on June 7);*
33. Uladzimir Kumets – detained on 10.05.2014 – 20 days of arrest *(got out on May 30);*
34. Nikolay Babushkin – detained on 08.05.2014 – 5 days of arrest *(got out on May 13);*
35. Aliaksandr Kurets – detained on 17.05.2014 – 15 days of arrest *(got out on June 1);*
36. Yevgeny Skrebets – detained on 19.05.2014 – 10 days of arrest *(got out on May 27);*
37. Yevgeny Manko – detained on 08.05.2014 – 20 days of arrest *(got out on May 28)*.

21. http://spring96.org/ru/news/71170

Annex II

Article 17.1 of the Code of Administrative Violations of the Republic of Belarus (*KoAP*)

Article 17.1. Disorderly Conduct

Use of obscene language in a public place, humiliating harassment of citizens, and other deliberate actions that violate public order, the activities of an organisation, or the peace of citizens and show clear disrespect for society, shall result in the imposition of a fine in the amount of two to thirty basic units or administrative arrest.

Article 23.4 of the Code of Administrative Violations of the Republic of Belarus (KoAP)

Article 23.4. Failure to obey the legal orders or demands of an official performing his or her official duties

Failure to obey the legal orders or demands of an official of a state body who is performing his or her official duties by a person who is not subordinate to this official in terms of employment, shall result in the imposition of a fine in the amount of two to 50 basic units or administrative arrest.

fidh

Keep your eyes open

Establishing the facts

Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.
FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

Supporting civil society

Training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

Mobilising the international community

Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part inthe development of international legal instruments.

Informing and reporting

Mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website… FIDH makes full use of all means of communication to raise awareness of human rights violations.

VIASNA human rights center

Human Rights Center "Viasna" is a non-governmental human rights organization, created in 1996 during mass protest actions of the democratic opposition in Belarus. Viasna was initially a group created to help the arrested rally participants. It is now a national NGO with the central office in Minsk and regional organizations in the majority of Belarusian cities. Viasna has about 200 members all over the country.

On 28 October 2003 the Supreme Court of the Republic of Belarus groundlessly cancelled registration of Viasna for its participation in observation of the presidential election in 2001.

The main goal of Viasna is to contribute to development of the civic society in Bearus, based on respect to human rights, described in the Universal Declaration of Human Rights and the Constitution of the Republic of Belarus.

Objectives of the Human Rights Center "Viasna":

– Practical assistance to civic initiatives in the sphere of legal defense of citizens;
– Research into the state of the civic society and legal defense in the Republic of Belarus;
– Civic and human rights education;
– Promotion of democracy and human rights;
– Support of civic initiatives in the sphere of human rights

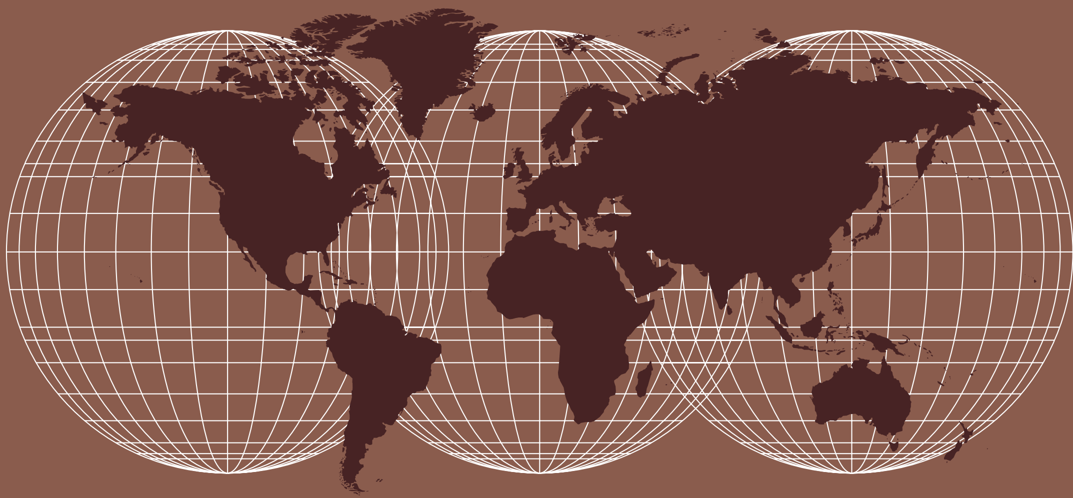
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FIDH
represents 178
human rights organisations
on 5 continents



inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest, detention or exile. Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 11: (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty

ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

A broad mandate
FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

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FIDH was established in 1922, and today unites 178 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

An independent organisation
Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

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